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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th April 2008

No.4924-1i/1-(J)-12/2007/LE. —In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 20th March 2008 in Industrial Disputes Case No.19/2007 of the Presiding Officer, Labour Court, Jeypore to whom the Industrial Dispute between the Management of the Divisional Forest Officer, Ghumusar North Division, Bhanjanagar, Dist-Ganjam and their workman Shri Mahajan Naik was referred for adjudication is hereby published as in the schedule below:

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, JEYPORE, KORAPUT
INDUSTRIAL DISPUTE CASE NO.19/2007

The 20th March 2008

Present : Shri G.K. Mishra, O.S.J.S. (Junior Branch)
Presiding Officer,
Labour Court, Jeypore
Dist : Koraput

Between: The Divisional Forest Officers,
Ghumusar North Division,
Bhanjanagar.
At/P.O.-Bhanjanagar,
Dist- Ganjam.

.. First-Party— Management

Versus

Shri Mahajan Naik,
S/o- Shri Narayan Naik
At/P.O.- Dholopitta,
P.S.- Tarasingi,
Dist- Ganjam.

.. Second-Party—Workman

Under Sections :10 & 12 of the Industrial Disputes Act, 1947

<i>Appearances</i> : For the Management	.. None
For the Workman	.. Self
Date of Argument	.. 14-03-2008
Date of Award	.. 20-03-2008

1. The Government of Orissa in the Labour and Employment Department in exercise of the power conferred upon them under sub-section (5) of Section 12 read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following disputes vide their Order No. 10888 (5), dated the 20th September 2007 for adjudication of the following disputes :—

SCHEDULE

“Whether the action of the Divisional Forest Officer, Ghumusar North Division, Bhanjanagar, District- Ganjam in terminating the services of Shri Mahajan Naik with effect from the 1st November 2004 by way of refusal of employment is legal and/or justified ? If not, what relief Shri Naik is entitled to ?

AWARD

2. This is a case seems to have been originated out of the reference submitted by the Government for determination of an issue regarding the validity and justifiability of the termination entertained by the Management in respect of the Second Party-Workman.

3. The Management having not participated in the proceeding. The reference case was set *ex parte*. The workman was engaged as a Watchman in 1984 and continued as such till 1997 and the engagement was continued thereafter by placing him at Forest Check Gate, Dholopita and further order to work in the office of the D.F.O. Bhanjanagar till 31st October 2004. The workman was again engaged in Gilani Forest Range but unfortunately the workman was not allowed to work from the 1st November 2004. There is no scrap of paper to substantiate the continuity of the service. All the engagement were made verbally by the Management. The doubt casts on the propriety of the continuity of service has been clarified by the letter submitted by the A.L.O., Bhanjanagar vide letter No. 3212, dated the 8th August 2006 to the Management. In the said letter the admission of the Management considering the workman as a senior most staff has been reflected. The back ground of the reflection of facts does indicate that the workman was in continuous and uninterrupted service under the Management. The Management did not disclose under which circumstances the workman was disengaged. As per the version of the workman he was transferred to Gilani Forest Range but he was not allowed to join in that Range. The act of the authority is not allowing the workman to join in his duty amounts to unfair labour practice. There is no aspersion regarding the voluntary abandonment of service by the workman. In absence of such aspersion it can be deduced that the service of the workman was continued till he was disengaged whether there is no voluntary abandonment of service, the disengagement by the authority amounts to retrenchment. The workman has got right to livelihood which is part and parcel of right to life. Right to livelihood is meaningless if right to work is not

protected. Once the workman is employed his service can not be taken away arbitrarily except in accordance with the procedure established by the law. The arbitrary termination violates the constitutional provision as enumerated Articles 14 and 16. The plea of mere nonavailability of the post is not maintainable for removal of the workman from his post. In the instant case protection is required to be given u/s. 25-F of the Industrial Dispute Act which is mandatory nature to be complied with by the Management. The power arbitrariness is clogged by the aforesaid provision. The retrenchment seems to have not been proceeded by any one month notice or notice pay or any compensation as required under the law. The provision having not been complied with by the Management, the disengagement of the workman however in its forum may be considered as illegal and inoperative in law.

4. The illegal termination paved the way for the court to grant reinstatement in service. The workman has not mentioned any thing either in the claim statement or otherwise showing his nonengagement during the period of termination for which no back wages is required to be based.

The reference is answered accordingly.

ORDER

In the result the reference is answered accordingly. The Management is directed to reinstate the workman without any back wages.

Dictated and Corrected by me

G.K. Mishra

dt. 20-03-2008

Presiding Officer,

Labour Court,

Jeypore, Koraput

G.K. Mishra

dt. 20-03-2008

Presiding Officer,

Labour Court.

Jeypore, Koraput

By order of the Governor

G.N. JENA

Deputy Secretary to Government